

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HAROLD C. MORRIS
Claimant

VS.

DILLON COMPANIES, INC.
Respondent
Self-Insured

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Docket No. 180,821

ORDER

Claimant filed an application for review before the Appeals Board requesting a review of the Award entered by Administrative Law Judge George R. Robertson dated January 4, 1995.

APPEARANCES

Claimant appeared by his attorney, Robert R. Lee of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Scott J. Mann appearing for John F. Hayes of Hutchinson, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant has asked the Appeals Board to review the Administrative Law Judge's finding that claimant was entitled to an 11 percent permanent partial general disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, hearing the arguments and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant injured both of his upper extremities while performing repetitive work activities as a meat market manager for the respondent from January 9, 1993 through May 15, 1993. Respondent provided medical treatment through Milo G. Sloo, III, M.D., an

orthopedic surgeon in Salina, Kansas. Dr. Sloo's diagnosis was bilateral moderately severe carpal tunnel syndrome and right ulnar tunnel syndrome. Dr. Sloo performed a right carpal tunnel syndrome release and a right ulnar tunnel release on May 17, 1993. He performed a left carpal tunnel syndrome release on June 17, 1993. Dr. Sloo returned the claimant to his regular work without restrictions. However, at the regular hearing held on October 13, 1994, claimant's wrists remained symptomatic from residuals from the carpal tunnel syndrome. At that time, claimant was also taking anti-inflammatory medication to relieve his symptoms. After the surgeries, claimant was able to return to his regular job at the same wage he was earning prior to his injuries. Therefore, the presumption against work disability applies and claimant's disability is limited to the percentage of functional impairment. See K.S.A. 1992 Supp. 44-510e(a).

Two physicians testified in this matter and gave their opinions on the issue of permanent functional impairment. Dr. Sloo testified on behalf of the respondent and Dr. Ernest R. Schlachter testified on behalf of the claimant. Dr. Sloo opined, in accordance with the AMA Guides, that the claimant had sustained 11 percent functional whole body permanent impairment as a result of his work-related carpal tunnel syndrome. On the other hand, Dr. Schlachter opined, in accordance with the AMA Guides and his forty-plus years of experience, that claimant's carpal tunnel syndrome resulted in a 17 percent permanent partial whole body impairment.

The Administrative Law Judge awarded claimant 11 percent permanent partial general disability by adopting the opinion of claimant's treating physician, Dr. Sloo. The Administrative Law Judge specifically found in his Award that he considered the functional impairment rating given by Dr. Schlachter, but did not give such rating any weight. The Administrative Law Judge found from his past experience that Dr. Schlachter's opinions were not credible.

The claimant argued that Dr. Schlachter's opinion on the extent of claimant's functional impairment was credible. Claimant urges the Appeals Board to equally weigh Dr. Schlachter's opinion of 17 percent with Dr. Sloo's 11 percent and award claimant a 14 percent permanent partial general disability. Conversely, the respondent contended that the decision of the Administrative Law Judge is correct. The respondent argued that Dr. Sloo's opinion is more credible than Dr. Schlachter's because he was the claimant's authorized treating physician and a board-certified orthopedic surgeon. In contrast, respondent stated that Dr. Schlachter is a "specialist in nothing" and his opinions are not worthy of consideration.

The weight to give to an expert's testimony is a matter of consideration for the trier of fact. Plains Transp. of Kan., Inc. v. King, 224 Kan. 17, 21, 578 P.2d 1095 (1978). However, the Appeals Board's scope of review of an award of an administrative law judge is de novo with the Appeals Board having the authority to increase or diminish an award of compensation. K.S.A. 44-551, as amended by S.B. 649 (1996) and Rios v. Board of Public Utilities of Kansas City, 256 Kan. 184, 189, 883 P.2d 1177 (1994). Claimant employed Dr. Schlachter for an examination and evaluation on the question of claimant's permanent functional impairment. The Appeals Board has reviewed Dr. Schlachter's deposition and finds that it does not contain appropriate objections or other valid reasons for his opinions not to be given appropriate consideration and weight in determining claimant's entitlement to an award based on permanent functional impairment. Additionally, Dr. Schlachter has 41 years of experience of performing examinations of injured employees. Accordingly, the Appeals Board finds that Dr. Schlachter's opinion of 17 percent and Dr. Sloo's opinion of 11 percent should be given equal weight in

determining claimant's permanent functional impairment. The Appeals Board, therefore, finds that the appropriate award in this case is claimant's entitlement to a 14 percent permanent partial general disability based on functional impairment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson dated January 4, 1995 is hereby, modified and an award is entered as follows:

AN AWARD OF COMPENSATION IS HEREBY ENTERED IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Harold C. Morris, and against the respondent, Dillon Companies, Inc., a qualified self-insured, for an accident which occurred on May 15, 1993 and based on an average weekly wage of \$701.16.

Claimant is entitled to 9 weeks of temporary total disability at the rate of \$299.00 per week or \$2,691.00 and 6 weeks of temporary partial disability which is converted to temporary total disability in the amount of 4.52 weeks at the rate of \$299.00 per week or \$1,351.48, followed by 401.48 weeks at \$65.44 per week or \$26,272.85 for a 14 percent permanent partial general disability making a total award of \$30,315.33.

As of June 30, 1996, claimant would be entitled to 13.52 weeks temporary total disability compensation at the rate of \$299.00 per week (after the conversion of temporary partial payments) in the amount of \$4,042.48, followed by 149.62 weeks of permanent partial general disability at the rate of \$65.44 per week in the amount of \$9,791.13 for a total of \$13,833.61 which is due and owing in one lump sum, minus any amounts previously paid. Thereafter, claimant is entitled to 251.86 weeks at the rate of \$65.44 per week totaling \$16,481.72, until fully paid or further order of the Director.

All other findings and orders of the Administrative Law Judge are adopted by the Appeals Board as its own and are incorporated into this Order.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Scott J. Mann, Hutchinson, KS
George R. Robertson, Administrative Law Judge
Philip S. Harness, Director